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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/518,709	12/22/2004	Oliver Clemens Robert Kratzer	21854-00050-US	4837
30678 7590 02/20/2008 CONNOLLY BOVE LODGE & HUTZ LLP 1875 EYE STREET, N.W. SUITE 1100 WASHINGTON, DC 20036			EXAMINER NGUYEN, TUAN N	
			ART UNIT 3751	PAPER NUMBER
			MAIL DATE 02/20/2008	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No.

10/518,709

Applicant(s)

KRATZER, OLIVER CLEMENS  
ROBERT

Examiner

Tuan N. Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 30 November 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 36-49 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 36-49 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments with respect to claims 22-35 have been considered but are moot in view of the new ground(s) of rejection as indicated below. It is noted that the applicant merely argued with respect to the Kensey reference not disclosing a pivotable carrying handle as claimed in new claims 36-49. The examiner agrees and has replaced the Kensey reference with the Kelsey reference as indicated below. It is also noted that new claims 36-49 are similar to claims 22-35 with the exception of the limitation "a carry handle attached to the closure element and is pivotable between a carrying position and a stowed position."

### ***Specification***

2. The abstract of the disclosure, received November 02, 2007, is objected to because --handle 12-- on line 8 should be --handle (12)--. Appropriate revision is required.

### ***Claim Objections***

3. Claims 36-49 are objected to because of the following informalities: there is no ending period in claims 36 and 47; "A" in line 1 of claims 37-49 should be --The--; and "An" in line 3 of claim 45 should be --an--. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 45-49 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The limitations "A closure element" in line 1 of claim 45, "a lid" in line 6 of claim 45 and "a carry handle" in line 10 of claim 45 appear to be a double inclusion of that in claim 36 and claims 45-49 put the limitations inside the inclusive "consisting of" language; therefore, it is unclear as to the difference between the limitations of claims 45-49 and those of claims 36-44. Furthermore, the further incorporation of other structures as set forth in claims 46-49 added to the inclusive language as set forth in claim 45 are improper which make claims 46-49 indefinite. Therefore, claims 45-49 are being examined as best understood.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 36-40 and 42-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pool (4,240,568) in view of Kelsey (5,269,438).

Regarding claims 36 and 44, Pool shows (as in Figures 2 and 7) a container and lid combination including a container (65), a closure element (20) with an internal flange (35) that abuts and sealingly engages with the internal edge of the rim of the container (see Fig. 7). There is a pivotable lid (21) attached to the closure element (20) which has

a dependent internal flange (44) adapted to sealingly engage with an internal edge (28) of the closure element.

Pool lacks a pivotable carrying handle integrally molded with the closure element, as claimed. Kelsey, however, shows such a handle (5) that is considered as being integrally molded to a closure element (3) to aid in the decanting of liquid from the container (Fig. 4) and in the handling of the container in use and when not in use (see col. 2, line 1 et seq.). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to employ, on the Pool device, a handle that is being integrally molded to a closure element, as taught by Kelsey in order to aid in dispensing of liquid from the container and in the handling of the container in use and when not in use.

Regarding claims 37-38, note that the dependent internal flange (44) sealingly engages with the internal edge (28) of the closure element by wiping and extending past an internal sealing strip (29) on the flange of the closure element (Pool, Fig. 2,7). The dependent flange is shaped to allow drainage back into the container when applied to the closure.

Regarding claims 39-40, the closure element also contains a pouring spout (30), which guides the flow of liquid from the container and a peripheral bead (40) along the outer surface of the flange to seat below the container rim.

Regarding claims 42-43, note that the upstanding wall of the container (65) includes an outwardly facing circumferential corrugation (69) located below the rim. The amount that the corrugation extends outwardly relative to the lid is a simple matter of

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design choice dependent upon the size of the container, and as such fails to patentably distinguish.

Regarding claims 45-48, refer to the discussion above. With respect to claim 45, further note that the closure element includes an annular ring (29). The internal flange (35), which depends from the annular ring, facilitates sealing between the closure element and a can, and thus constitutes "can rim sealing flange" in full response to the claim (see Fig. 7). Also, with respect to claim 48, it is noted that the pouring spout (30) extends from the annular ring (see Fig. 1).

1. Claims 41 and 49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pool in view of Kelsey, and further in view of Giarrante (5,893,489).

Pool and Kelsey, as combined, show a container-lid combination including a closure element with a pivoting lid, but fail to disclose a camming surface associated with the hinge. Giarrante, however, shows a similar container-lid combination wherein the lid hinge (25) is associated with a camming surface (24) to hold the lid in a preferred position (Figs 1-2.). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to have provided the lid arrangement of the apparatus as combined with a pivoted lid incorporating a camming surface as shown by Giarrante to enable selective positioning of the lid relative to the closure element.

### ***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Muchin et al., Seabolt, and Godshalk et al. disclose other closure elements with a handle thereon.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tuan Nguyen whose telephone number is (571) 272-4892. The examiner can normally be reached on Monday -Friday 10A.M-6 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Huson can be reached on (571)272-4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Tuan Nguyen/  
Primary Examiner, Art Unit 3751

TN